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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/967,109      | 09/28/2001  | Trevor Vernon Smith  | 3120.00026          | 8086             |

7590

04/17/2003

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EXAMINER

LEGESSE, NINI F

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 04/17/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/967,109

Applicant(s)

SMITH, TREVOR VERNON

Examiner

Nini F. Legesse

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24,27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24,27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Applicant's amendment to claims 1, 2, 8, 10, and 21 is acknowledged in paper no. 10. Applicant has indicated on his remarks that claims 1-24 are the pending claims in the application, however since he has not indicated if claims 27-28 are cancelled claims 27 and 28 are also examined in this office action.

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a) because they fail to show how the position indicator arm is attached to the shoulder pad including the ball and socket joint and the locking means as disclosed on page 3 of the specification.

- A locking means as disclosed in claim 10 is not shown in any of the drawings;
- A ball and socket joint as disclosed in claim 11 is not shown in any of the drawings.

Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Applicant's instant page 4, at lines 12-13, appears to indicate that a "new drawing" has been submitted. Apart from those proposed on 07/15/02 no new drawings are noted. The defects in those drawings remain as indicated in the office action mailed on 09/20/02.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1 – 7, 9, and 12-24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole (US Patent No. 5,919,097) in view of Gentilly (US Patent No. 3,643,960), Wilkins (US Patent No. 4,637,612), and Brouwer (US Patent No. 2,809,043).

Cole discloses a golf swing indicator (10) comprising:

- An attachment means (16, 24, 26) for attaching a support member (12) adjacent to a shoulder of a golfer, the support member (12) having shoulder position indicator means/arm (22) projecting outwardly therefrom and forwardly relative to the golfer (Fig. 3) and the golf training aid is used for indicating the shoulder turn during a takeaway in the back swing (column 2, lines 25-34);
- The indicator arm is an elongated member and is substantially perpendicular to the shoulder of the golfer (22, refer to Fig. 1 & 3);
- The indicator arm comprises a resilient member (in column 1, lines 40-43 it is discloses that the device is made of plastic sheet and plastic is a resilient material and also in column 4, line 7 it is disclosed that the arm is a flexible material);

- The shoulder position indicator means (22) is adjustably secured to the support member (since Velcro members 24 and 26 are used to position the indicator means, it can be concluded that the position indicator is adjustable);
- Position retaining means (24,26);
- Indicator member (22);
- The shoulder position indicator means comprises a first indicator member that is supported by the indicator arm (referring to Figs. 1-3, the first indicator member is considered to be the tip of item 22) and a second indicator member located adjacent to the shoulder of the golfer (referring to Fig. 1-3, the second indicator member is considered to be the bottom of item 22)
- A pad (14);
- The support member is located over the forward shoulder of the golfer relative to the swing (Fig. 3); and
- The attachment means comprises a harness mechanism (16).

Cole discloses the invention as recited above but fails to show if the indicator could be positioned on the shoulder rather than the upper arm of a golfer. However, the Gentilly, Wilkins and the Brouwer references teach that positioning a training device on the shoulder location in order to teach a golfer about proper swing is nothing new. With respect to Gentilly, he teaches about the positioning of a training device (14) on the shoulder of a golfer using a harness (refer to Fig. 1), in order to teach a golfer a proper and maximum back-swing while maintaining the head in the proper position (column 2, lines 26-49). Wilkins also teaches about a training device (14) that is positioned on a

shoulder of a golfer (refer to Fig. 2). Wilkins' device is to contact the chin area of a golfer at a predetermined point during a swing of a club thereby providing a distinctive sensation that indicates to the golfer that a correct club-swing position has been achieved (refer to the abstract). Gentilly also discloses a device in which the support member (1) comprises a pad (5) and also wherein the pad comprises a flexible pad (column 1, lines 57-60) as stated in claims 16-18 of the present application. And with respect to Brouwer, he also teaches about a device that is used to teach the proper swing and improved strokes to a golfer (refer to column 1, lines 15-46). Brouwer includes a harness that is secured to the golfer's shoulder and a second member that is secured to the adjacent arm of the golfer forcing the golfer to pivot or swing his body and arm as a unit and to compel the golfer to eliminate free swing of the arms independently of the body (refer to column 1-2). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to position the golf swing indicator device of Cole on the shoulder as taught by Gentilly, Brouwer, and Wilkins in order to teach a golfer to achieve a proper swing.

With respect to claims 21-24, it appears that these claims are directed to the obvious steps of using the Cole in view of Gentilly, Lazier, and Wilkins references of a golf swing training aid.

**Claims 8 and 10** are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-7 above, and further in view of Lazier (US Patent No. 5,785,603).

The references as applied to the above claims fail to include a shoulder position indicator with pivotally securing means and a locking means. Lazier discloses a pivotally secured means (Figs. 1-7) and a locking means (66). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a pivotally secured support member with a locking means as disclosed by Lazier in the references as applied to claims 1-7, in order to secure the shoulder position indicator to any position.

**Claims 11, 27, and 28** are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-7 above, and further in view of Stawicki (US Patent No. 5,150,901).

The references as applied to the above claims fail to disclose a ball and socket joint, an indicator means that can be moved in at least two planes wherein said at least two planes are perpendicular to each other. Stawicki discloses a ball (44) and socket (46) joint that can be moved in at least two planes wherein said at least two planes are perpendicular to each other (for example refer to Fig. 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a ball and socket joint as taught by Stawicki in the references as applied to claims 1-7, device in order to practice the correct swing for striking a golf ball for any particular golf shot.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-24, 27 and 28 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini F. Legesse whose telephone number is (703) 605-1233. The examiner can normally be reached on Monday - Friday from 9:30 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell, can be reached on (703) 308-2126. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Paul T. Sewell  
Supervisory Patent Examiner  
Group 3700